

OVERTHRUST OIL AND GAS CORP.
88 I.D. 38

IBLA 81-27

Decided January 13, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U 29872.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payments the afternoon of the day due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the business practices of other Governmental agencies accepting a postmark as the date of delivery is not a justifiable excuse.

4. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: Robert G. Pruitt, Jr., Esq., Pruitt and Gushee, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Overthrust Oil and Gas Corporation appeals from the September 11, 1980, decision of the Utah State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease U 29872.

Appellant's lease was terminated by operation of law for failure to pay the annual rental on or before the anniversary date.

The anniversary date of the lease was August 1, 1980. Appellant's rental was not received by BLM in Salt Lake City, Utah, until August 4, 1980. BLM notified appellant that the lease had terminated by operation of law for failure to pay the rental in a timely manner.

Appellant, through its president and sole officer, Shirley Thorup, petitioned BLM for reinstatement of the lease, asserting that the rental payment had been mailed on the last day of July within Salt Lake City, and that, due to the death of a friend and the circumstances of the marriage of her daughter, she (Mrs. Thorup) was not emotionally able to conduct the appellant's business affairs. Mrs. Thorup also stated it was her belief that depositing a payment in the mails constituted timely payment if received by the addressee within a reasonable time.

BLM issued its decision denying reinstatement because it found that appellant had not shown the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence, a showing required by 43 CFR 3108.2-1(c).

In its statement of reasons on appeal appellant essentially agrees with the facts as found by BLM but hopes the Board will render a less harsh decision and will approve the reinstatement.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. 43 CFR 1821.2-2(d), (f); Gretchen Capital, Ltd., 37 IBLA 392 (1978). A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant's rental payment was due on August 1, 1980. The payment is claimed to have been mailed July 31 but the postmark was August 1. Assuming the postmarked date as the date of mailing, we find that mailing the rental payment on the afternoon it was due, even within the same city, does not constitute reasonable diligence. Constitution Petroleum Company, Inc., 25 IBLA 319 (1976). Reasonable diligence has not been exercised where a rental payment is posted at a time that one could not assume delivery before

the statutory terminal date of the lease. Ronald C. and Mary A. Hill, 38 IBLA 315 (1978); J. R. Oil Corp., 36 IBLA 81 (1978); Adolph F. Muratori, 31 IBLA 39 (1977). The postmark date on a letter bearing payments of annual rental for an oil and gas lease will be deemed to be the date of mailing, in the absence of satisfactory evidence corroborating the lessee's assertion that the payment was mailed before the postmark date. Annie Mae Buckley, 44 IBLA 99 (1979); Daniel Ashley Jenks, 36 IBLA 268 (1978); David R. Smith, 33 IBLA 63 (1977).

[3] In order for the failure to pay rental timely to be justifiable, generally, the failure must be caused by factors outside the lessee's control, which were the proximate cause of failure. John J. O'Loughlin, 50 IBLA 50 (1980); James E. Kordosky, 43 IBLA 63 (1979); Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Louis Samuel, 8 IBLA 268 (1972). Neither lessee's ignorance of the law and regulations nor reliance on the business practices of other Governmental agencies in accepting a postmark as the day of delivery is a "justifiable" excuse within the meaning of the reinstatement provisions. ^{1/}

^{1/} Appellant contends that BLM denied reinstatement due to its misconception of the value of the lease. The value of any lease, however, has no bearing on the question of reinstatement.

[4] It is well settled that all who deal with the Government are presumed to have knowledge of the pertinent statutes and duly promulgated regulations, regardless of their actual knowledge of what is therein contained. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Robert W. Hansen, 46 IBLA 93 (1980); Willene Minnier, 45 IBLA 1 (1980).

The burden of showing that the failure to pay the rent when due was justifiable or not due to a lack of reasonable diligence is on the appellant. 43 CFR 3108.2-1(c)(2). It has failed to meet this burden.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

